



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

-DECISION-

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

DECISION NO.: 356-BH-84

DATE: April 3, 1984

APPEAL NO.: 04884

S.S.NO.:

CLAIMANT: Harry S . Hodgins

CO. NO.: 12

EMPLOYER: Mayor & Commissioners of Delmar
Town of Delmar

APPELLANT: EMPLOYER

ISSUE: Whether the claimant was discharged for gross misconduct, connected with the work within the meaning of §6(b) of the law; whether the claimant was discharged for misconduct, connected with the work, within the meaning of §6(c) of the law, and whether the claimant was employed in a major nontenured policy-making or advisory position within the meaning of §20(g) (7) F of the law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

May 3, 1984

-APPEARANCE-

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant - not present

James Peck -
Town Manager
John Thornton -
Attorney

DEPARTMENT OF EMPLOYMENT & TRAINING
John Roberts - Special Counsel

## EVIDENCE CONSIDERED

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced into this case, as well as Department of Employment and Training's documents in the appeal file.

## FINDINGS OF FACT

The claimant was employed as the Chief of Police for the town of Delmar from June of 1981 until September 21, 1982. He earned \$14,700.00 per year. The town of Delmar is a small town which straddles the Maryland-Delaware border. The Delaware portion of the town and the Maryland portion of the town each have their own mayors. The town shares one police department, one administrative unit and one public works department. The town also owns several properties jointly.

The police chief was an employee of both towns, earning 50% of his paycheck from each town. Although the claimant had no written contract of employment, he did have an official job description describing his duties. The claimant had the authority to hire and fire other policemen on the force. The entire force, however, consisted of four other persons. There was a police commission which oversaw the police functions of the community. The police commission had the ultimate authority on police policy. The claimant did have some advisory role to play before the police commission.

The claimant was fired by a joint resolution of the mayor and council of Delmar, Delaware and the mayor and commissioners of Delmar, Maryland. He was fired because he had assaulted a prisoner in his custody and forced him to confess to a crime which the prisoner had not committed.

## CONCLUSIONS OF LAW

The first issue in this case is whether the claimant was employed in covered employment within the meaning of §20(g) (7)(v)E. That subsection of the law exempts, from the definition of covered employment, service performed ". . . in a position that, under the laws of this State, is designated a major nontenured policymaking or advisory position. . . ."

In the case of Robert DiGrazia, 1194-BH-80, the Board found that the Chief of the Montgomery County Police Department was employed in a major nontenured policymaking position within the meaning of that section. That decision was upheld on appeal by the Circuit Court for Montgomery County, Maryland. The Board distinguishes that case from the case presently before us. In that case, the police chief was in charge of a large police

COPIES MAILED TO:

CLAIMANT

EMPLOYER

John H. Thornton, Esquire  
CULLEN , INSLEY & HANSON  
132 E. Main Street  
Salisbury, MD 21801

John Roberts - Special Counsel

UNEMPLOYMENT INSURANCE - SALISBURY



DEPARTMENT OF HUMAN RESOURCES  
 EMPLOYMENT SECURITY ADMINISTRATION  
 1100 NORTH EUTAW STREET  
 BALTIMORE, MARYLAND 21201  
 383 - 5040

BOARD OF APPEALS  
 THOMAS W. KEECH  
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 HAZEL A. WARNICK  
 Associate Members  
 EVERN E. LANIER  
 Appeals Counsel  
 MARK R. WOLF  
 Administrative  
 Hearings Examiner

STATE OF MARYLAND  
 HARRY HUGHES  
 Governor  
 KALMAN R. HETTLEMAN  
 Secretary

- DECISION -

	DATE:	July 18, 1983
CLAIMANT: Harry S. Hodgins 200 E. Pine Street Delmar, Maryland 21875	APPEAL NO:	04884
	S. S. NO.:	044-26-5891
EMPLOYER: Town of Delmar Pennsylvania Avenue Delmar, Maryland 21875	L. O. NO.:	12
	APPELLANT:	Claimant
ISSUE:	Whether the claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) of the Law.	

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NOTICE OF RIGHT OF FURTHER APPEAL

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON August 2, 1983

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- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Harry S. Hodgins - Claimant

James P. Peck -  
 Mayor and Richard  
 E. Cullen - Attorney

FINDINGS OF FACT

The claimant worked for the employer from June, 1981 until September 21, 1982. He was employed as Chief of Police, earning \$14,700.00 per year, scheduled to work forty hours per week, Monday through Friday, plus overtime.

During a trial held on July 12 and 13, 1982, the claimant was found guilty and convicted on July 15, 1982 of assault and misconduct in office. The claimant was acquitted of the charge of -assault and battery. The claimant's conviction was based upon the uncorroborated testimony of the victim, an individual in custody at the time of the assault.

On July 14, 1982, the claimant was suspended by the employer without pay for a period of seven days, and his suspension was continued by the employer until the claimant's appeal rights were exhausted or until he elected not to file a further appeal.

On September 29, 1982, the date of sentencing for the claimant, he was placed on probation by the Court and prohibited from carrying a firearm, an essential piece of equipment for his continued employment as Chief of Police. The employer testified that since the claimant was no longer able to continue performing the duties of his job, since he was prohibited from carrying a firearm, they could not continue the claimant's employment, and he was discharged:

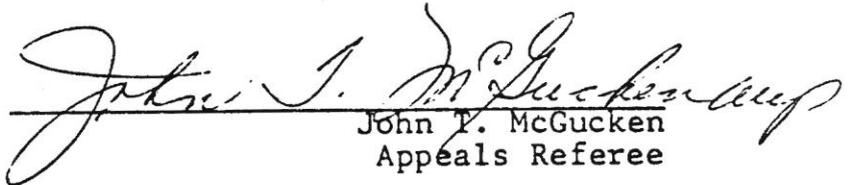
#### CONCLUSIONS OF LAW

While the Court has found that the claimant was convicted of assault and misconduct in office, he was not discharged by the employer until he lost the use of his firearm, and failed to exercise his appeal rights. The facts and circumstances causing the claimant's conviction were not presented at the appeals hearing or to the Local Office, and it is impossible from a simple finding of guilt to determine whether or not the claimant's conduct was a deliberate and willful disregard of standards of behavior which the employer had a right to expect, showing gross indifference of the employer's best interest. In fact, no evidence was presented that the claimant's actions were deliberate or willful or grossly indifferent to the best interest of the employer. But, in fact, the claimant's conviction may have resulted from over-enthusiasm in attempting to protect the interest of the employer or from poor judgment on the part of the claimant or as a result of a technical assault, not requiring any intent on the part of the claimant. Therefore, it must be found that the claimant was discharged by the employer for failure to be able to continue to perform the duties of his job when he lost, his firearm, as was suggested by the employer. Under the circumstances, it will be found that the claimant was separated for a non-disqualifying reason within the meaning of Section 6(c) of the Law. Benefits will be allowed, without penalty, provided the claimant is otherwise eligible.

DECISION

The claimant was discharged, but for a non-disqualifying reason within the meaning of Section 6(c) of the Law. Benefits will be allowed, without penalty, provided the claimant is otherwise eligible.

The determination of the Claims Examiner is reversed.

  
John T. McGucken  
Appeals Referee

Date of hearing: 5/25/83  
amp/7685  
(Peterson)  
3054  
Copies mailed to:

Claimant  
Employer  
Unemployment insurance - Salisbury

Richard E. Cullen, Esquire  
c/o Town of Delmar  
Pennsylvania Avenue  
Delmar, Maryland 21875